IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7490 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KULDEEPSING @ SURENDRASING @ BABA PRATAPSING RAWAT (RAJPUT)
Versus
THE COMMISSIONER OF POLICE & ORS

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Appearance :
MR HEMANT B RAVAL for Petitioner:1
RULE SERVED for Respondents:1, 3,
MR L R PUJARI, AGP for Respondent:2

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 12/12/2007

ORAL JUDGMENT

1) The petitioner-detenue has approached this Court under Article 226 of the Constitution for a writ of

habeas corpus or any other direction to set aside the order dated 17-02-2007 of his detention under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short “PASA”). According to the impugned order of the Police Commissioner of Ahmedabad City, the petitioner is of cruel nature and always holding deadly weapons and in complicity with his colleagues indulging in anti social activity of committing theft of two wheelers and thereby spreading feeling of insecurity in public. That, eight offences of theft punishable under Section 379 of the Indian Penal Code, 1860 have been registered vide I-CR No.230/2005 dated 22-3-2005, I-CR No.166/2005 dated 29-5-2005, I.C.R.No.826/2006 dtd.13.8.2006, I-CR.No.883/06 dtd.28.8.2006, I.C.R.No.988/06 dtd.21.9.06, I.C.R.No.1191/06 dtd.7.11.06, I.C.R.No.1193/06 dtd.7.11.06 and I.CR.No.351/06 dtd.24.12.2006. The said offences are registered with different police stations of Ahmedabad City for which he is stated to have been arrested pursuant to those alleged offences. Conclusion of the petitioner being a “dangerous person” is drawn also on the basis of statements of two witnesses, whose identities were not disclosed. Thus, after recording the subjective

satisfaction about the petitioner being a “dangerous person” and with a view to preventing him from acting in a manner prejudicial to the maintenance of public order, the impugned order was made and grounds thereof were supplied to the petitioner.

2) Learned counsel, Mr.H.B.Raval appearing for the petitioner pointed out from the material on record that the statements of two witnesses, whose identity was not disclosed, did not inspire any confidence insofar as the material part thereof was couched in identical terms in both the statements recorded by the police commissioner. He further submitted that the petitioner, being aged person, was not even alleged to have any earlier criminal record and, even assuming his involvement in offences registered against him, they were stray incidents of theft and, at the worst, infraction of law and order. He further submitted that the petitioner did not fall within the definition of “dangerous person” under Section 2 (c) of the PASA since he cannot be said to have habitually committed any offence contemplated by the definition and he cannot be deemed to be acting in any manner which could be deemed to be likely to adversely affect the maintenance of public

order.

3) Learned AGP vehemently argued that the impugned order and the grounds stated therein were precise and the order based on subjective satisfaction of the authorized officer ought not to be set aside on a different interpretation of the material on record. He submitted that the incidents of theft of motor cycles and cars, in quick succession were likely to cause feeling of insecurity among the general public or at least a section thereof. Under such circumstances, the impugned order of detention was not only perfectly legal but justified according to the submission.

4) As observed by the Supreme Court in **M.J.Shaikh Vs. M.M.Mehta [1995 (2) GLR 1268]**, “habitually” means constant, customary and addicted to specified habit and the term habitual criminal may be applied to anyone who has been previously convicted of a crime to the sentences and committed to prison more than twice. The word 'habitually' means usually and generally. Almost similar to that meaning given in the Law Lexicon by R.Ramnath Aiyar is assigned to the word 'habit' in Aiyar's Judicial Dictionary. It

does not refer to frequency of the occasions but to invariability of practice and habit has to be proved by totality of facts. It, therefore, follows that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is “dangerous person” unless there is material suggesting his complicity in such cases which lead to a reasonable conclusion that the person is a habitual criminal. In **Vijay Narain Singh v. State of Bihar [1984 (3) SCC 14]**, the Supreme Court considered the expression “habitually” to mean 'repeatedly' or 'persistently' and observed that it implies a thread of continuity stringing together similar repetitive acts but not isolated, individual, and dissimilar acts and that repeated, persistence and similar acts are necessary to justify an inference of habit.

5) On the other hand, it is settled by the Supreme Court in **Commissioner of Police and Others v. C.Anita [(2004) 7 SCC 467]** that stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder

but every infraction of law does not necessarily result in public disorder.

6) Applying the ratio of the above judgments in the facts of the present case, it would appear that three incidents of theft of motor cycles and cars and the registration of offences punishable under Sections 379 and 114 of the Indian Penal Code in quick succession were stray and unorganized crimes of theft and coupled with alleged assault, even if the allegations of the offences and allegation made in the statements of the undisclosed witnesses were accepted as gospel truth. But they were not matters of public order since they did not and they cannot tend to affect the even flow of public order as held by the Supreme Court in **Commissioner of Police and Others v. C.Anita** (supra). In that view of the matter, the provisions of PASA made for preventive detention of dangerous persons for preventing anti social and dangerous activities prejudicial to the maintenance of public order could not have been pressed into service for detaining an accused person, who was already released on bail by a Court of law.

6) For the reasons recorded in the judgment dictated today, the petition is allowed. The impugned order of detention dated 17.02.2007 passed by the Police Commissioner, Ahmedabad City is quashed and set aside. The detenu Kuldeepsing @ Surendrasing @ Baba Pratapsing Rawat (Rajput) is ordered to be set at liberty forthwith if not required in connection with any other case by any other authority. Rule is made absolute accordingly. Direct service is permitted.

(***M.D.SHAH, J.***)

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